## BEFORE THE FISH AND WILDLIFE COMMISSION OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 12.11.501, 12.11.3901,	)	ADOPTION
12.11.3940 and the adoption of NEW	)	
RULE I regarding recreational use on	)	
Lake Alva, Harpers Lake, and Lake	)	
Marshall	)	

## TO: All Concerned Persons

- 1. On May 9, 2013, the Fish, Wildlife and Parks Commission published MAR Notice No. 12-385 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 755 of the 2013 Montana Administrative Register, Issue Number 9.
- 2. On September 5, 2013, at page 1563 of the 2013 Montana Administrative Register, Issue Number 17, the Fish and Wildlife Commission (commission) published a notice of extension of comment period and a proposed alternative to be considered for Lake Alva.
- 3. The commission has amended ARM 12.11.501, 12.11.3901, and 12.11.3940, and adopted NEW RULE I (ARM 12.11.3962) as proposed on May 9, 2013.
- 4. The commission has thoroughly considered the comments and testimony received. A summary of the comments received and the commission's responses are as follows:

The commission received a total of 272 comments, 131 supporting and 122 opposing the adoption of the rule regarding recreational use on Lake Alva. Another 15 comments offered alternatives that were more restrictive on motor use than a no wake rule, such as no motors allowed, electric motors only, or a horsepower restriction. Four comments supported an alternative of allowing a wake from August 1 through Labor Day. The commission has thoroughly considered the comments received and the commission's responses are as follows:

Comment 1: Thirty-two comments stated that the no wake rule would benefit common loons.

Response 1: Boat wakes can reduce nesting and rearing success of common loons. However, human disturbance of the nests can reduce nest success and chick survival as well. Nest disturbance by people happens often on Lake Alva, regardless of the craft used. In addition, there are other factors such as weather and predation that affect nesting and rearing success on Lake Alva. Therefore, the influence a no wake regulation could have on success of nesting and rearing of

common loons is uncertain and likely minor with the current disturbances of nests by people.

Comment 2: Forty-three comments suggested that displacement of existing boaters on Lake Alva would result in more crowding on nearby lakes.

Response 2: The number of users that could be displaced from Lake Alva is small considering the multiple other lakes available in the area. Furthermore, boaters looking for a no wake speed experience should move from other lakes to Lake Alva.

Comment 3: Fourteen comments suggested that the Forest Service campground would be used less as a result of a no wake regulation.

Response 3: The campground is not expected to see a change in the number of visitors. Not all campground visitors use Lake Alva specifically, and while some high-speed users would be displaced, they should be replaced by users looking for a slower paced motorized or non-motorized experience.

Comment 4: Fourteen comments wanted more restrictions on motor use other than a no wake rule including horsepower restriction, electric motors only, or no motors at all.

Response 4: A no wake rule achieves the objective of a slower paced, quieter recreational setting without regulating the type of watercraft used. The rule does not exclude users based on their watercraft; however, it requires some users to use their craft differently on Lake Alva than they did previously.

Comment 5: A few comments suggested an alternative of allowing wakes only during the summer or just the warmer part of the day, for example from 11 a.m. to 6 p.m. when high speed use is common and fishing and paddling are rare.

Response 5: The warmer part of the year and part of the day is when most people want to be on the water, so allowing wakes just during the warmer part of the season or day would not reduce the conflicts. Furthermore, the no wake rule on Lake Alva will likely help address conflicts on other lakes by moving users that want a slower paced experience to Lake Alva. Allowing wakes only during the warmer times of the day is difficult to enforce with varied awareness of the time of day by users and availability of enforcement personnel.

Comment 6: A few comments suggested that Lake Alva was a lesser used lake than the others in the area and provides a unique experience for high-speed users.

Response 6: If speed remains unrestricted it is a concern that high-speed use of Lake Alva will increase, making this lower use characteristic temporary. Lake

Alva is less crowded and has no residential development and is used by people who wish to recreate in a less developed area.

Comment 7: A few comments suggested that there were plenty of opportunities for high speed use in the area while a few comments stated there were plenty of opportunities for no wake speed use in the area.

Response 7: Boating opportunities are ample in the Seeley Lake area. Lake Alva (300 acres) is one of seven medium to large lakes (290 – 1,200 acres) that provide high-speed motorized opportunity. Lake Inez has limited public-access parking and ramp limitations. There are many smaller lakes (100 acres or less) in the area with motorized or no wake restrictions. Only three of these smaller lakes (Harpers Lake, Upsata Lake, and Elbow Lake; 15-90 acres) have a ramp that facilitates access. There is no parking available at the Elbow Lake ramp. In the past, the public and Forest Service have requested that the commission consider a no wake proposal on Lake Alva. Low- and high-speed boating use can be incompatible and there is limited accessible low-speed boating opportunity in the area. Proposing a no wake rule on Lake Alva can address conflicts on other lakes in the area as well.

The commission received a total of 52 comments, 38 supporting and 14 opposing the adoption of the rule regarding recreational use of Harpers Lake. The commission has thoroughly considered the comments received and the commission's responses are as follows:

Comment 8: Six comments suggested that allowing electric motors would improve accessibility for seniors and those with disabilities.

Response 8: Allowing electric motors provides boating opportunities for recreationists that are unable to or find it difficult to row a boat.

Comment 9: Six comments preferred a no wake regulation.

Response 9: Allowing only electric motors is more consistent with the current slow and quiet use of Harpers Lake for fishing. Allowing gas motors would add noise and possibly speed.

Comment 10: Two comments suggested the lake would become too crowded by allowing electric motors.

Response 10: Use on other lakes in the area that allow electric motors has not resulted in overcrowding. The access to Harpers Lake is excellent and the lake is small lending itself to crowding, but the lake is stocked with trout for anglers. Anglers requested electric motor use to be permitted on the lake. The commission expects electric motors will keep the current angling and recreational experience of the lake while providing accessibility to only a few extra people.

The commission received a total of 42 comments, 32 supporting and 10 opposing the adoption of the rule regarding recreational use on Lake Marshall. The commission has thoroughly considered the comments received and the commission's responses are as follows:

Comment 11: Three comments preferred a no wake regulation on Lake Marshall and one comment suggested improving access to the lake. Combined, these comments suggest making Lake Marshall an accessible, no wake alternative for boating.

Response 11: A no wake regulation would allow any sized motor and therefore boat onto Lake Marshall. Lake Marshall is located on the Marshall Creek Wildlife Management Area (WMA) owned by the Department of Fish, Wildlife and Parks. The WMA was acquired for wildlife protection and production. Developing Lake Marshall into a destination recreation area would be inconsistent with the management goals of the WMA.

Comment 12: Two comments suggested banning all motors on Lake Marshall.

Response 12: The use of electric motors is consistent with the wildlife management goals of the WMA and would not require further development of a site to accommodate their use. Lake Marshall is 80 acres in size and therefore large enough to possibly require an electric motor to use.

Comment 13: One comment suggested limiting motors to 10-15 horsepower.

Response 13: A 10-15 horsepower motor would have a similar efficiency as some electric motors. By allowing electric motors only, a more quiet setting for recreation and wildlife is maintained.

/s/ Dan Vermillion/s/ Zach ZipfelDan Vermillion, ChairmanZach ZipfelFish and Wildlife CommissionRule Reviewer

Certified to the Secretary of State January 21, 2014